

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ULIS F. BARFUSE,

Appellant,

v.

KING COUNTY,

Respondent.

PCHB No. 80-142

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from the denial of a flood control zone permit by King County, having come on regularly for informal hearing on the 12th day of March, 1981, in Seattle, Washington, and appellant Ullis F. Barfuse representing himself, and respondent King County represented by James L. Brewer, Deputy Prosecuting Attorney with David Akana, member, presiding, and the Board having considered the exhibits, record and file herein, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 2nd day of April, 1981, and more than twenty days having elapsed from said service; and


1 The Board having received exceptions to said Proposed Order from
2 appellant and the Board having considered the exceptions and denying
3 same, and being fully advised in the premises, NOW THEREFORE,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
5 Order containing Findings of Fact, Conclusions of Law and Order
6 dated the 2nd day of April, 1981, and incorporated by reference herein
7 and attached hereto as Exhibit A, are adopted and hereby entered as
8 the Board's Final Findings of Fact, Conclusions of Law and Order
9 herein.

10 DATED this 29th day of April, 1981.

11 POLLUTION CONTROL HEARINGS BOARD

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13 NAT W. WASHINGTON, Chairman

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15 DAVID AKANA, Member

16 Did not participate
17 GAYLE ROTHROCK, Member

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26 FINAL FINDINGS OF FACT,
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PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from a denial of a flood control zone permit, came before the Pollution Control Hearings Board, David Akana, presiding, at a hearing in Seattle on March 12, 1981.

Appellant appeared pro se; respondent was represented by James L. Brewer, deputy prosecuting attorney.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Respondent is an agency delegated to administer and enforce the provisions of chapter 86.16 RCW and chapter 508-60 WAC relating to state flood control zones in unincorporated portions of King County.

II

Appellant owns certain property in the vicinity of Fall City, King County. The site is located on the banks and within the 100 year floodway of the Snoqualmie River. The site lies within the Snoqualmie River Flood Control Zone No. 5.

Appellant's site is situated entirely within the "floodway" of the Snoqualmie River during a 100 year frequency flood as that term is used in ch. 508-60 WAC. During such a flood, the site would be inundated by water moving downstream.

III

The instant site is located about 1200 feet north of a newly constructed bridge and approaches. Substantial amounts of fill were placed at the bridge site and on a road located about 200 feet north of the river. Appellant reports evidence of other works or structures along the river. There was no evidence that any identified work or structure was constructed without a flood control zone permit. Inquiries from appellant regarding grading and shoreline permit applications on the Snoqualmie and Raging Rivers do not establish any improper activity by the county relating to flood control zone permits or enforcement.

IV

Appellant seeks to place about 500 cubic yards of fill on his property within the floodway for use as a parking lot. The source of the fill is said to come from a location north of the site within the floodway fringe (WAC 508-60-010(3)), which is not within the floodway. The proposed fill would adversely affect the flow of the river during a flood, not because of the particular fill in question, but because the cumulative effect of future similar fills along the river could. Respondent would consider a fill within the floodway, provided that the fill material came from an area nearby and within the floodway. Appellant did not find this suggestion acceptable.

V

After considering appellant's application, respondent denied it relying in particular on WAC 508-60-040(3):

The structures or works will not adversely influence the regimen of any body of water by restricting, altering, hindering or increasing flow of the flood waters in the floodway or flood channel expected during a flood up to a magnitude of one hundred year frequency. (In consideration of this provision the department shall determine whether the structures or works either alone, or in combination with existing or future similar works could adversely influence the efficiency or the capacity of the floodway or adversely affect existing drainage courses or facilities. The determination of these effects shall be based on the assumption that the floodway encroachment resulting from any proposed structures or works will extend for a significant reach of the stream together with an encroachment equal in degree on the opposite side of the stream.);...

The decision was appealed to this Board.

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board makes these

CONCLUSIONS OF LAW

I

WAC 508-60-040 provides that applications for permits for any works or structures upon the floodway must comply with all of its provisions. Appellant's proposed fill has not been shown to meet the requirement of WAC 508-60-040(3). Respondent has shown, on the other hand, that the proposed fill, in combination with future similar works, could adversely influence the efficiency or capacity of the floodway and thereby adversely influence the regimen of the Snoqualmie River.

II

Appellant's claim that other works or structures have been constructed in the floodway was not shown to be unlawful. Even if unauthorized, or if a permit had been erroneously issued, this would not prevent respondent from now correctly enforcing and administering the statute. See The Frame Factory v. Department of Ecology, 21 Wn. App. 50 (1978).

III

Respondent's decision should be affirmed.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 hereby adopted as such.

2 From these Conclusions, the Board enters this

3 ORDER

4 King County's denial of a flood control zone permit to Ullis F.
5 Barfuse is affirmed.

6 DATED this 2nd day of April, 1981.

7 POLLUTION CONTROL HEARINGS BOARD

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11 DAVID AKANA, Member